

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
	:	
of	:	
	:	
<b>DIMARI LEWIS</b>	:	<b>DETERMINATION</b>
	:	<b>DTA NO. 819288</b>
for Redetermination of a Deficiency or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law for the Year 2001.	:	
	:	

Petitioner, Dimari Lewis, 117 Kensington Avenue, Jersey City, New Jersey 07304, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 2001.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on July 30, 2004 at 9:30 A.M. Petitioner appeared by her mother, Penney Lewis Everett. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (David A. Brocca and Marion Cusack).

The final brief in this matter was due by November 12, 2004, and it is this date that commences the three-month period for the issuance of this determination.

***ISSUES***

I. Whether the Division of Taxation properly disallowed petitioner's claimed earned income credit on the basis that she failed to substantiate the receipt of earned income during the 2001 tax year.

II. Whether petitioner, if she establishes that she had earned income for the 2001 tax year, has also established that her stepsister lived with her for the entire 2001 tax year and was thus a qualifying child for purposes of computing the earned income credit.

***FINDINGS OF FACT***

1. On or about May 28, 2002, petitioner herein, Dimari Lewis, filed with the Division of Taxation (“Division”) Form IT-201-E, Declaration for E-filing of Income Tax Return for the 2001 tax year. Petitioner’s Form IT-201-E for 2001 reported Federal and New York adjusted gross income of \$9,014.00, that no tax was withheld for the year at issue and that she was due a refund of \$903.00, which amount represented her claimed earned income credit. The claimed New York State earned income credit of \$903.00 is computed by simply multiplying petitioner’s Federal earned credit of \$3,610.00 by 25%. Petitioner’s Federal Schedule EIC, Earned Income Credit, claimed that she had two qualifying children: her daughter, Antionette Lewis, born in August 2001, and her stepsister, Jada A.P. Lewis, born in 1996. Federal Schedule EIC also provided the respective social security numbers for both Antionette Lewis and Jada A.P. Lewis.

2. Reported Federal and New York State adjusted gross income of \$9,014.00 consisted of the following items of income, deductions and adjustments:

ITEM	AMOUNT
Gross receipts from business	\$10,050.00
Less total business expenses	350.00
Net profit from business	9,700.00
Less one-half of self-employment tax	686.00
Adjusted gross income	\$9,014.00

Petitioner's Federal Schedule C-EZ, Net Profit From Business, indicated that her principal business activity was day care, an endeavor she conducted from her apartment located at 315 South Allen Street, Albany, New York.

3. At the time that the Division received petitioner's 2001 tax return, it had in its possession certain information from the Federal Social Security Administration regarding social security numbers issued from 1978 to May 1, 2002 which were determined to be valid as a dependent allowed for earned income credit purposes. Upon processing petitioner's 2001 tax return, the Division discovered that the social security number shown on her return for her daughter Antionette Lewis was not a valid number according to the information obtained from the Federal Social Security Administration. Accordingly, the Division did not allow the \$903.00 refund as claimed on petitioner's return.

4. On September 13, 2002, the Division sent a letter to petitioner asking for certain information to prove that she was conducting a legitimate day care business which generated \$10,050.00 of gross receipts and that she in fact had two qualifying dependents. Petitioner submitted some of the information requested in the September 13, 2002 letter; however, she did not provide "a sampling of the documents used to record your transactions, such as copies of your receipt booklet, pages from any ledgers you maintain, bank statements, paid receipts, canceled checks, and/or invoices," nor did she furnish verification of the address of her claimed dependents with "a statement on school or physicians's letterhead indicating the child's name, date of birth, address of record, and the name of parent/legal guardian with whom the child resided during the tax year. . . ."

***SUMMARY OF THE PARTIES' POSITIONS***

5. Petitioner maintains that from January 2001 to August 2001 she provided day care services to George Pounds, Jr., her mother's infant son, and Mulan Williams, the son of one Mary Williams, an individual who is apparently unrelated to petitioner. Petitioner submitted signed statements from her mother and Ms. Williams indicating that they paid her \$4,480.00 and \$5,600.00, respectively, for providing day care services for their children during 2001. The payments were purportedly made in cash since it was stated that petitioner did not maintain any bank accounts. Petitioner argues that the signed statements provide adequate proof that she generated \$10,050.00 of earned income from her day care activities during the 2001 tax year.

6. In addition to providing day care services for her stepbrother, George Pounds, Jr., petitioner also asserts that her stepsister, Jada A. P. Lewis, lived with her for the entire 2001 tax year because of health problems being experienced by her mother. Petitioner maintains that her signed statement that Jada A. P. Lewis "resided in my residence during the 2001 tax year" was corroborated by her mother's testimony and thus it has been established that Jada A. P. Lewis is a qualifying child for purposes of computing her allowable earned income credit.

7. Petitioner also argues that she was unfairly and illegally singled out for audit as the result of the actions of a Division employee who had been involved in a feud with her mother.

8. The Division maintains that petitioner, although requested to do so, did not submit sufficient evidence to substantiate that she generated \$10,050.00 of gross receipts from her alleged day care activities during the 2001 tax year. Although petitioner submitted the signed statements from her mother, Penney Lewis Everett, and Mary Williams, the Division asserts that these are self-serving statements that are unsupported by any other independent or supporting evidence. Furthermore, the Division was not able to verify from its records that Penney Lewis

Everett and Mary Williams reported income for the 2001 tax year in an amount sufficient to pay the amounts which they claim were given to petitioner for day care services.

9. With respect to the issue concerning Jada A. P. Lewis's status as a qualifying child for purposes of computing the earned income credit, the Division argues that there is no documentary evidence to support that Ms. Lewis lived with petitioner for the entire 2001 tax year and was thus eligible to be claimed by petitioner as a qualifying child.

### ***CONCLUSIONS OF LAW***

A. As applicable to this proceeding, Tax Law § 606(d) provides that the New York State earned income credit for the 2001 tax year is equal to 25% "of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . ." Since the State earned income credit is determined based solely on a percentage of the Federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code ("IRC") and Federal case law to determine petitioner's eligibility for the earned income credit.

B. The Federal earned income credit, provided for pursuant to IRC § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based as a percentage of a taxpayer's "earned income" which includes, *inter alia*, wage income and earnings from self-employment (IRC § 32[c][2]). The only issue to be addressed with respect to the claimed earned income credit is whether petitioner has sustained her burden of proof (Tax Law § 689[e]) to show that she generated earned income during the 2001 tax year.

C. The evidence adduced in this matter is clearly insufficient to establish that petitioner was engaged in conducting a day care business in 2001 and that she generated \$10,050.00 of earned income from these activities. Petitioner maintained no books and records, either formal or informal, from which income and expenses could be determined, and there is no credible

evidence in the record to support that she conducted a day care business and received income from such activity. In fact, although it was stated that petitioner did not maintain any bank accounts, thus requiring all payment to her in cash, such statement is belied by the fact that her 2001 Federal income tax return requested that her refund be direct deposited to a checking account. Since the earned income credit is computed based on a percentage of a taxpayer's earned income, the amount of earned income must be established in order to determine the allowable credit. In the instant matter, petitioner has failed to substantiate the amount of earned income received in 2001, and therefore she is not entitled to claim the earned income credit (*Blore v. Commr.*, 80 TCM 559).

D. Although the issue concerning Jada A. P. Lewis's status as a qualifying child for purposes of computing the earned income credit is rendered moot by Conclusion of Law "C", it is noted that there is insufficient evidence in the record to support that Ms. Lewis resided with petitioner for all of 2001. Accordingly, petitioner is not entitled to claim this person as a qualifying child.

E. Finally, with respect to petitioner's allegation that she was unfairly and illegally singled out for audit by a vindictive Division employee, I note that the record before me clearly establishes that petitioner's 2001 tax return was selected for audit as the result of a discrepancy with respect to her daughter's social security number. There is no credible evidence in the record to support petitioner's assertion of misconduct by a Division employee with respect to the selection of her return for examination.

F. The petition of Dimari Lewis is denied and the Division's denial of the \$903.00 refund claimed on her 2001 income tax return for the earned income credit is sustained.

DATED: Troy, New York  
February 10, 2005

/s/ James Hoefer  
PRESIDING OFFICER